

**Office of Chief Counsel
Internal Revenue Service
memorandum**

Number: **201119028**

Release Date: 5/13/2011

CC:PSI:7:CGABRYSH

PRENO-149594-10

UILC: 4051.00-00

date: February 15, 2011

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subject: Retail Tax on Imported Trucks

This responds to your request for Non-Taxpayer Specific Legal Advice regarding the imposition of the § 4051 retail truck tax on imported trucks in various scenarios. All of the trucks described in the scenarios have chassis and bodies of the type that are subject to the § 4051 tax. This document may not be used or cited as precedent.

Section 4051(a)(1) of the Internal Revenue Code imposes a 12 percent excise tax on the first retail sale of certain enumerated articles, including bodies and chassis of highway trucks.

Section 4051(a)(2) excludes from the tax imposed by § 4051(a)(1) truck bodies and chassis that are suitable for use with a vehicle that has a gross vehicle weight (GVW) of 33,000 pounds or less.

Section 4052(a)(1) defines the term “first retail sale” as the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation.

Section 145.4052-1(a)(1) of the Temporary Excise Tax Regulations Under The Highway Revenue Act of 1982 (Pub. L. 97-424) provides that for purposes of § 4051(a)(1), the term “first retail sale” means a taxable sale described in § 145.4052-1(a)(2).

Section 145.4052-1(a)(2) provides that the sale of an article is a taxable sale unless --- (i) The sale is a tax-free sale under § 4221; (ii) For sales after June 30, 1998, see § 48.4052-1; (iii) There has been a prior taxable sale of the article.

Section 145.4052-1(c) provides that for purposes of the regulations under § 4051, the use of an article will be deemed to be a sale of the article.

Section 145.4052-1(a)(3) provides that if the sale of an article is a taxable sale under § 145.4052-1(a)(2), the tax shall be computed on the price as determined under § 145.4052-1(d).

Section 145.4052-1(d)(1) provides that the price for which an article is sold includes the total consideration paid for the article whether that consideration is paid in money, services, or other forms. Section 145.4052-1(d)(2) provides rules for determining the § 4051 tax when a manufacturer, producer, importer, or related person is liable for this tax.

Section 48.4052-1(a) of the Manufacturers and Retailers Excise Tax Regulations provides that tax is not imposed by § 4051 on the sale of an article for resale or leasing in a long-term lease if, by the time of the sale, the seller has in good faith accepted from the buyer a statement that the buyer executed in good faith in substantially the same form, and subject to the same conditions, as the certificate described in § 145.4052-1(a)(6), except that the certificate must be signed under penalties of perjury and need not refer to Form 637 or include a registration number.

Section 145.4052-1(f)(5) provides that rules similar to the rules of § 4221 and the regulations thereunder apply to the regulations under § 4051.

Section 4221(a)(2) provides, in part, that the sale of an article taxable under § 4051 is exempt from tax if the article is sold for export. Sections 48.4221-1 and 48.4221-3 provide criteria that must be met for this exemption.

In Rev. Rul. 85-95, 1985-2 C.B. 204, the domestic manufacturer of a truck whose body and chassis were subject to the § 4051 tax sold the truck for export to a dealer in a foreign country. The truck was used in the foreign country. X, a domestic used truck wholesaler and retailer, purchased the used truck in the foreign country and imported the used truck into the United States for resale. X sold the imported and used truck to a retail customer. The revenue ruling held that X's sale of this truck to its retail customer was the first retail sale of the truck in the United States after importation. The retail tax did not apply to the original manufacturer's sale of the truck for export because the sale was not a sale at retail. No initial retail sale, taxable or tax-free, occurred before the exportation of the truck out of the United States. The first retail sale after the vehicle

was subsequently imported into the United States presented the first, and only, opportunity to impose the tax.

Scenario 1

Facts. M, a United States truck manufacturer, is a Form 637 registrant that exported a truck to a foreign country and sold the truck there to a foreign dealer. M did not pay a § 4051 excise tax on this transaction because M claimed that the truck sale was exempt from the § 4051 tax because § 4221 exempts from tax otherwise taxable sales of trucks that are sold for export. The foreign dealer resold the truck to E, an entity that used the truck in the foreign country. E then sold the truck in the foreign country to a U.S. retailer of used trucks, R. R imported the truck into the United States and sold the truck to a U.S. customer.

Analysis. M's sale of the truck to the foreign dealer was not the first retail sale of the truck because the sale occurred outside the United States. Similar to the situation described in Rev. Rul. 85-95, this sale was not "exempt under § 4221" because the sale would not have been subject to tax in any event. The later sales of the truck by the foreign dealer and by E in the foreign country are also foreign sales that the Code does not tax. Therefore, the first retail sale of the truck occurred when R sold the truck to a U.S. customer. M's registration status is irrelevant to this analysis.

R is liable for the § 4051 tax because R made the first retail sale of the truck. The tax on R's sale is computed consistent with § 145.4052-1(d).

Scenario 2

Facts. M, a United States truck manufacturer, is a Form 637 registrant that sold a truck in the United States to a foreign dealer for export to a foreign country. At the time of sale, M had received from the foreign dealer a certificate described in § 48.4052-1(a) (exemption certificate). In the foreign country, the foreign dealer resold the truck to E, an entity that used the truck in the foreign country. E then sold the truck in the foreign country to U, a United States trucking company. U imported the truck into the United States for use in its business.

Analysis. Because M received from the foreign dealer an exemption certificate, M's sale of the truck in the United States was not the first retail sale of the truck and thus was not subject to the § 4051 tax. The sales of the truck by the foreign dealer and E in the foreign country are foreign sales that the Code does not tax. Therefore, the first retail sale of the truck occurred when U used the truck in the United States. Section 145.4052-1(c) equates use of a taxable article with its sale. M's registration status is irrelevant to this analysis.

U is liable for the § 4051 tax because U's use of the truck is treated as a sale of the truck under § 145.4052-1(c)(1). The tax on U's use of its imported truck is computed under § 145.4052-1(c)(5).

Scenario 3

Facts. M, a United States truck manufacturer, is a Form 637 registrant that sold a truck in the United States to a foreign dealer for export to a foreign country. At the time of sale, M had not received from the foreign dealer an exemption certificate. M, however, claimed that the truck sale was exempt from the § 4051 tax because § 4221 exempts from tax otherwise taxable sales of trucks that are sold for export. In the foreign country, the foreign dealer resold the truck to E, an entity that used the truck in the foreign country. E then sold the truck in the foreign country to U, a United States trucking company. U imported the truck into the United States for use in its business.

Analysis. Because M did not receive from the foreign dealer an exemption certificate, M's sale of the truck in the United States was the first retail sale of the truck and thus was subject to the § 4051 tax. However, because the sale was a sale for export, the § 4051 tax did not apply to this sale (assuming all the § 4221 conditions are met). The sales of the truck by the foreign dealer and E in the foreign country are foreign sales that the Code does not tax. U's first use of the truck in the United States is not the first retail sale in the United States and thus not subject to tax under § 4051.

Scenario 4

Facts. M, a United States truck manufacturer, is a Form 637 registrant that sold a truck in the United States to a foreign dealer for export to a foreign country. At the time of sale, M had not received from the foreign dealer an exemption certificate. M, however, claimed that the truck sale was exempt from the § 4051 tax because § 4221 exempts from tax otherwise taxable sales of trucks that are sold for export. In the foreign country, the foreign dealer resold the truck to U, a United States trucking company, who imported the truck into the United States in an unused and undamaged condition. U then used the truck in the United States in its business.

Analysis. Because M did not receive from the foreign dealer an exemption certificate, M's sale of the truck in the United States was the first retail sale of the truck and thus was subject to the § 4051 tax. However, because the sale was a sale for export, the § 4051 tax did not apply to this sale (assuming all the § 4221 conditions are met). U's first use of the truck in the United States is the first retail sale in the United States because the truck was returned to the United States in an unused and undamaged condition. § 48.4221-3(a)(2)(i).

U is liable for the § 4051 tax because U's use of the truck is treated as a sale of the truck under § 145.4052-1(c)(1). The tax on U's use of its imported truck is computed under § 145.4052-1(c)(5).

Scenario 5

Facts. R, a United States retailer of used trucks, bought a truck in a foreign country where the truck was manufactured and used. R imported this truck into the U.S. and sold the truck to a retail customer.

Analysis. R's sale of its truck after its importation to a retail customer is the first retail sale of the truck in the United States. See § 4052(a)(1).

R is liable for the § 4051 tax because R is made the first retail sale of the truck in the United States. The tax on R's sale of the truck is computed under § 145. 4052–1(d).

Please call Celia Gabrysh at (202) 622-3130 if you have any further questions.